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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1957

No. 919

STATE OF CALIFORNIA, DEPARTMENT OF MENTAL HYGIENE,
Petitioner,

vs.

DALE W. COPUS,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the Supreme Court of Texas.

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INDEX

	Page
Citations to opinions below	1
Jurisdiction	2
Questions presented	2
Statutes involved	3
Statement	3
How federal questions were presented	5
Reasons for granting the writ	9
Conclusion	14

Index to Appendix

	Appendix Page
Appendix A Statutory provisions	1
United States Constitution, Article IV, Section 1	1
28 U.S.C., Section 1738	1
United States Constitution, Amendment 14, Section 1	2
California Welfare and Institutions Code:	
Section 6650	2
Section 6651	3
Section 6652	4
Section 6658	4
Texas Probate Code:	
Section 423	5
Appendix B—Decision of the Supreme Court of Texas sought to be reviewed	6
(a) Opinion	6
(b) Judgment	33
(c) Motion for rehearing	35
(d) Denial of motion for rehearing	44

Appendix Page

Opinion, Court of Civil Appeals 45

Judgment, Judicial District Court 55

Findings of fact and conclusions of law of Judicial District Court 57

Appendix C—States having statutes similar to California Welfare and Institutions Code, Section 6650 59

Appendix D—States having Uniform Reciprocal Enforcement of Support Act or like legislation 60

CITATIONS

Cases

	Pages
Alaska Packers Assn. v. Industrial Accident Commission, 294 U.S. 532	13
Broderick v. Rosner, 294 U.S. 629	13
Converse v. Hamilton, 224 U.S. 243	13
Hughes v. Fetter, 341 U.S. 609	13
McGee v. International Life Insurance Co., No. 50, October Term, 1957, U. S. Supreme Court (Dec. 16, 1957) [2 L.Ed. 2d, 223]	13
Old Dearborn Co. v. Seagram Corp., 299 U.S. 183	11
Stebbins v. Riley, 268 U.S. 137	11
Young v. Masci, 289 U.S. 253	13

Constitution

United States Constitution:

Article IV, Section 1 ..... 2, 3, 5, 8, 12, 13

Fourteenth Amendment, Section 1 ..... 2, 3, 5, 9

Statutes

28 U.S.C. 1257(3)	2
28 U.S.C. 1738	3
California Welfare and Institutions Code:	
Section 6650	3, 12
Section 6651	3, 4
Section 6652	3, 10
Section 6658	3
Texas Probate Code:	
Section 423	12

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STATE OF CALIFORNIA, DEPARTMENT OF MENTAL HYGIENE,
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vs.

DALE W. COPUS,
Respondent.

PETITION FOR WRIT OF CERTIORARI to the Supreme Court of Texas.

The State of California, Department of Mental Hygiene, prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Texas entered in the above-entitled case on January 15, 1958, Motion for Rehearing denied, February 19, 1958.

CITATIONS TO OPINIONS BELOW.

The opinion of the 101st Judicial District Court, Dallas County, Texas (R. 23-24) is unreported and

is printed in Appendix B hereto, *infra,* pp. 55-56. The opinion of the Court of Civil Appeals of Texas (R. 114-120), printed in Appendix B hereto, *infra,* pp. 45-54, is reported in 301 S.W.2d 217. The opinion of the Supreme Court of Texas, printed in Appendix B hereto, *infra,* pp. 6-32, is reported in 309 S.W.2d 227.

JURISDICTION.

The judgment of the Supreme Court of Texas was entered on January 15, 1958 (R. 206-207), Appendix B hereto, pp. 33-34, *infra.* Rehearing was denied on February 19, 1958 (R. 207). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3), since the validity of a state statute is drawn in question on the ground that it is repugnant to the Constitution of the United States and since a right is specially set up and claimed under the Constitution and statutes of the United States.

QUESTIONS PRESENTED.

(1) Whether the United States Constitution, Amendment 14, Section 1, guaranteeing equal protection of the laws prohibits Texas from enforcing against a Texas resident the obligation imposed by California statute for reimbursement for care and support of a mentally ill mother, committed to a California state hospital?

(2) Whether the United States Constitution, Article IV, Section 1 providing that full faith and credit

shall be given the statutes of a sister state makes mandatory the enforcement by Texas of a California statute imposing liability upon a son, a Texas resident, for care and support of his indigent mentally ill mother committed to a California state hospital which obligation is not contrary to the public policy of Texas?

STATUTES INVOLVED.

The statutory provisions involved are United States Constitution, Article IV, § 1, United States Constitution, Amendment 14, § 1, 28 U.S.C. § 1738, California Welfare and Institutions Code §§ 6650, 6651, 6652, and 6658. They are printed in Appendix A, *infra,* pp. 1-5.

STATEMENT.

The State of California, Department of Mental Hygiene sued Respondent, Dale W. Copus, in the District Court, Dallas County, Texas (R. 004-006). The stipulated facts are (R. 017-020):

Respondent was a resident of California prior to July 16, 1951 on which date he changed his residence to Texas. Ever since said date, he has been and now is a resident of Texas. In October, 1936, Respondent's mother, Lela Copus, was adjudged mentally ill in California and admitted to a California State Hospital where she has been a patient since. The California Welfare and Institutions Code, Section 6650

makes a son liable for the care, support, and maintenance of his mother confined to a State hospital. The Director of the Department of Mental Hygiene, pursuant to Section 6651 of the California Welfare and Institutions Code, determined and fixed the rate for the care and support of Lela Copus at $40 per month prior to July 31, 1951 and $90 per month since such date. Charges for the period May 1, 1948 through October 31, 1953 were sued for except the sum of $50 which had been paid by Respondent on June 12, 1951.

Upon a Motion for Summary Judgment, the District Court of Dallas County, Texas, gave judgment to the State of California (R. 024-025; Appendix B hereto, *infra,* pp. 55-56). Respondent appealed to the Texas Court of Civil Appeals. The Court of Civil Appeals held that no recovery could be had for support furnished after Respondent became a resident of Texas (R. 114-120; Appendix B hereto, *infra,* pp. 45-54). The court reached its decision by concluding that it is against the public policy of Texas to impose such liability. The State of California's Motion for Rehearing was denied (R. 123).

The State of California's Petition for Writ of Error to the Texas Supreme Court was granted (R. 206). The Supreme Court held that the enforcement of the California statutory obligation was not contrary to the public policy of Texas but concurred in the holding of the Court of Civil Appeals that no recovery could be had for support furnished after Respondent became a resident of Texas. The Supreme Court reached its decision by concluding that the

California statute had no extraterritorial effect and that to compel liability for the period after Respondent moved to Texas would deny to him equality with other citizens of Texas (Appendix B hereto, *infra,* p. 9).

California filed a Motion for Rehearing, pointing out that the court had found that the California statute was not contrary to the public policy of Texas, and that, consequently, refusal to enforce the statutory liability constituted a denial of full faith and credit contrary to the mandate of Article IV, Section 1 of the United States Constitution (Appendix B, *infra,* pp. 35-43). The Motion for Rehearing was denied (Appendix B, *infra,* p. 44).

HOW FEDERAL QUESTIONS WERE PRESENTED.

(1) The question whether the United States Constitution, Amendment 14, Section 1, guaranteeing equal protection of the law prohibits Texas from enforcing against a Texas resident the obligation imposed by California statute was raised by Respondent in his answer to California's complaint in the proceedings. He alleged that the California statutes were unconstitutional as applied to him since he had removed himself from the geographical limits of California (R. 007). The trial court passed on this issue in its conclusions of law by determining that the change of residence did not discharge the Respondent from continuing liability under the California statutes (R. 029).

The Respondent's appeal to the Court of Civil Appeals presented the issue in this statement of the alleged error of the trial court:

> "Appellant [Respondent] upon his removal to Texas and becoming domiciled in that State became a citizen thereof and as such citizen became entitled to equal protection with all of the citizens of our state, which right of equal citizenship would protect him from any extraterritorial effect of the statutes of a sister state." (R. 080)

Respondent's argument to this effect (R. 080-082) concludes with the statement:

> " . . .[T]he ruling of the trial court is in error that any liability of the [Respondent] under the statute and while he was a citizen of the State of California continued with him when he became a citizen of the State of Texas for clearly with such continuing liability he would not stand in equal relationship with those natural born citizens who clearly would not be liable under the statute." (R. 082)

The Court of Civil Appeals did not reach the question as to whether the equal protection of laws would forbid enforcement of the California statute as it declined enforcement of the statute on the ground that it was inconsistent with the public policy of Texas. However, judgment was given for the portion of the obligation which accrued before the respondent became a resident of Texas (R. 120). The Court of Civil Appeals held it *would* not enforce the California statute and accordingly found it unnecessary to determine whether it *could* or not.

The issue thus framed was whether the Texas courts as a matter of public policy should enforce the California statutory obligation against a Texas resident. On that question, the Supreme Court of Texas granted California's Application for Writ of Error (R. 206).

The Supreme Court of Texas held that the California statutory obligation was not contrary to the public policy of Texas (Appendix B, *infra,* pp. 15-16). Nonetheless the court held that to enforce the obligation after Respondent became a resident of Texas was prohibited by the United States Constitution in that enforcement would deny to him equality with other citizens in these words:

> "The general rule rather universally recognized is that the statutes of a state ex proprio vigore have no extraterritorial effect. It must be concluded, therefore, that the California statute could not create a legal obligation upon a citizen of Texas who was not a citizen of California when the obligation arose, that is, at the time the mother became institutionalized in California or at any time thereafter. We are aware of no rule of law that would make the obligation a continuing one after removal from California even though it attached to him while a resident of that state. Citizens of a state equally share the burdens and privileges of citizenship regardless of when or how that status is attained. To say that the support statute compelled liability for that period of time after the respondent moved to Texas would seem to deny to him equality with other citizens of the state." (Appendix B, *infra,* pp. 8-9.)

Thus the Supreme Court of Texas adopted a judicial approach to the question totally different from the Court of Civil Appeals. Where the Court of Civil Appeals held that it would not enforce the statute, the Supreme Court held that it could not.

(2) The question whether the United States Constitution, Article IV, section 1 providing that full faith and credit shall be given the statutes of a sister state makes mandatory the enforcement by Texas of the California statute was properly and timely raised.

The highest court in Texas having found that the California statute was not contrary to the public policy of Texas, although erroneously concluding that the 14th Amendment of the United States Constitution prohibited enforcement of the statute, California for the first time in the proceedings was in the position to present to the Texas courts the issue that refusal to enforce the California statute was contrary to Article IV, section 1 of the United States Constitution; that each state shall give full faith and credit to the public acts of every other state if to do so is not contrary to the public policy of that state. This was done in California's Motion for Rehearing by the Texas Supreme Court (R. 182-187) and in the Brief of the State of California in support thereof (R. 190-205). After due consideration, the Motion for Rehearing was denied (R. 207).

REASONS FOR GRANTING THE WRIT.

(1) The questions presented are of grave con
not only to the State of California but to those m
states who have statutes similar to the California s
ute imposing the obligation of support of a ment
ill or insane person at a state hospital on close r
tives (Appendix C, *infra,* p. 59) and to the forty-e
states which have enacted the Uniform Reciprocal
forcement of Support Act or similar legislation (
pendix D, *infra,* pp. 60-61).

If the enforcement of the California statute by
Texas courts against a Texas resident is prohibited
the equal protection clause of the 14th Amendn
then enforcement of the statutes of each of the st
with similar legislation is prohibited. Likewise ser
doubts could be cast upon the validity of the Unif
Reciprocal Enforcement of Support Act.

In recent years this country has been experienc
great population shifts. As a result of these sh
many effects are left in their wake. Not the leas
the states affected is California. The instant cas
but one example of the problem, ever increasing,
state furnishing care and support to a mentally ill
son and in seeking reimbursement for such care f
one who, by its statute is liable therefor, finds that
responsible relative is a resident of another state.
California legislature, aware of the problem and
sharply increased burden on the taxpayers for the
of the mentally ill, provided that the Director of
Department of Mental Hygiene shall "take such ac
as is necessary to effect . . . collection within or w

out the State . . ." (California Welfare and Institutions Code, section 6652, Appendix A, *infra,* p. 4). Pursuant to that legislative mandate this action was instituted against Respondent, who had taken up residence in Texas, for the cost of care of his indigent mentally ill mother in a California institution.

It would seem intolerable that a son could avoid the responsibility to support his mentally ill mother merely by the expediency of crossing state lines. Yet, that is the force of the decision of the Supreme Court of Texas. In so holding, the decision lends aid to those persons in our country who wish to avoid and evade liability for the support of close family members. The decision, moreover, casts upon the public in the various states the burden of supporting indigent mentally ill persons where the people of those states have indicated through their legislatures that such persons are not to be made public charges if there are close relatives who can provide for their care, support, and maintenance. Settlement by this court of the questions presented will give direction to those states plagued by transient populations which seek reimbursement from those legally and morally obligated to support the mentally ill.

It will be noted that in order to protect themselves from deserting providers, the various states have adopted in one form or another the Uniform Reciprocal Enforcement of Support Act or like legislation (Appendix D, *infra,* pp. 60-61). The Uniform Support Act as adopted by some twelve states including Texas and California requires the receiving state to enforce

the support obligation imposed by the statute of the sending state if the petitioner so elects. The holding of the Texas Supreme Court here that the Federal Constitution prohibits the enforcement by a forum state of support liabilities imposed by the statutes of another state directly jeopardizes this provision of the Uniform Support Act as adopted by those states. If the enforcement of support obligations arising in other states (which obligations are not contrary to the public policy of the forum) is in violation of the equal protection clause of the Constitution (which would seem to result if the instant decision is followed), then the substance and purpose of such legislation is nullified.

Thus, the instant decision would encourage the deserter and endanger the uniform and cooperative attempts of the several states to deter desertion and evasion of legal responsibilities and obligations.

(2) The judgment of the Supreme Court of Texas is believed to be erroneous.

(a) The Supreme Court of Texas has held that "To say that the support statute compelled liability for that period of time after the respondent moved to Texas would seem to deny him equality with other citizens of the state."

The equal protection clause of the United States Constitution does not insure universality in the operation of the law but merely insures that those persons similarly situated will receive equal treatment under the law (*Old Dearborn Co. v. Seagram Corp.*, 299 U.S. 183, 197; *Stebbins v. Riley*, 268 U.S. 137, 142).

The recognition of the obligation imposed under California law for that period of time after Respondent arrived in Texas by the Texas courts would not deny him equal protection of the law nor specifically would it unconstitutionally deny him equality with the citizens of that state. Unlike, perhaps the vast majority of the citizens of Texas, Respondent was at one time a resident of California and during his residence in California, had a mother who was committed to a mental institution there. The continuous imposition of the liability which was first incurred while he was a resident of California cannot be said to be unreasonable. Nor is the recognition of that liability by a Texas court discriminatory.

Moreover, as a result of the decision of the Supreme Court of Texas, Respondent is being placed in a better position than his fellow citizens of the State of Texas. The decision frees him from all obligation to support his mother, whereas under section 423 of the Probate Code of Texas, children (and even grandchildren) must support their indigent incompetent parents (and grandparents) (Appendix A, *infra,* p. 5). Thus Respondent is in the enviable position of being freed from the support which rests upon any other resident of either Texas or California who has an indigent mentally ill parent in the state of his residence.

(b) The Supreme Court of Texas by its decision has denied full faith and credit to the statutes of California in violation of the mandatory requirement of Article IV, section 1 of the United States Constitution. Under section 6650 of the California Welfare and In-

stitutions Code, a son has the duty to see that h
mentally ill parent is suitably and properly cared f
and where that parent is a patient of a state ment
institution, the son's obligation is to reimburse t
State of California through the Department of Ment
Hygiene for the cost of care, support, and maintenan
furnished by that state. The Supreme Court of Tex
expressly found there was no conflict between the pu
lic policy of the State of Texas and the enforceme
of the obligation created by California law. Californi
as the state having the custody and care of Respon
ent's incompetent mother, has a sufficiently direct a
important interest in the status relationship betwe
Respondent and his mother to entitle its support sta
ute to enforcement in Texas, particularly in view
the fact that Respondent was a California resident
the time his mother was committed and for fifte
years thereafter. Therefore, the enforcement of t
California statute is made mandatory by Article I
section 1 of the United States Constitution (*Broderi*
v. Rosner, 294 U.S. 629; *Converse v. Hamilton,* 2
U.S. 243; *Young v. Masci,* 289 U.S. 253; *Hughes*
Fetter, 341 U.S. 609; *Alaska Packers Assn. v. Indu*
trial Accident Commission, 294 U.S. 532; *McGee v. I*
ternational Life Insurance Co., No. 50, October Ter
1957, U. S. Supreme Court (Dec. 16, 1957) [2 L.E
2d 223].)

Thus, in stating that the statutes of a state
proprio vigore have no extraterritorial effect, the cou
ignored the origin and antecedents of the liability a
refused to honor the requirement of the United Stat

Constitution to afford full faith and credit to the statutes of the State of California.

CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Dated, San Francisco, California,
April 9, 1958.

Respectfully submitted,

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(Appendices Follow.)

Appendix A

STATUTORY PROVISIONS.

United States Constitution, Article IV, §1:

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

28 *U.S.C.* §1738:

> "The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.
>
> The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.
>
> Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

United States Constitution, Amendment 14, §1:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

California Welfare and Institutions Code:

> §6650: "The husband, wife, father, mother, or children of a mentally ill person or inebriate, the estates of such persons, and the guardian and administrator of the estate of such mentally ill person or inebriate, shall cause him to be properly and suitably cared for and maintained, and shall pay the costs and charges of his transportation to a state institution for the mentally ill or inebriates. The husband, wife, father, mother, or children of a mentally ill person or inebriate, and the administrators of their estates, and the estate of such mentally ill person or inebriate, shall be liable for his care, support, and maintenance in a state institution of which he is an inmate. The liability of such persons and estates shall be a joint and several liability, and such liability shall exist whether the mentally ill person or inebriate has become an inmate of a state institution pursuant to the provisions of this code or pursuant to the provisions of Sections 1026, 1368, 1369, 1370, and 1372 of the Penal Code."

California Welfare and Institutions Code:

§6651: "The monthly rate for the care, support, and maintenance of all insane persons and inebriates at the hospitals for the insane and inebriates where there is liability to pay for such care, support, and maintenance, shall be determined by the Director of Institutions, and shall be payable in advance. The superintendent of a State institution for the insane or inebriates shall, however, on the order of the Director of Institutions, reduce, cancel or remit the amount to be paid by the estate or the relatives, as the case may be, liable for the care, support, and maintenance of any insane person or inebriate committed thereto and confined therein, on satisfactory proof that the estate or relatives, as the case may be, are unable to pay the cost of such care, support, and maintenance. In any case where there has been an advance payment under this section, and such advances or any part thereof should be refunded because of the death, parole, or discharge of any inmate of such institution, such amount shall be paid by the institution or the Department of Institutions to the person who made the payment upon demand, and in the statement to the Controller the amounts refunded shall be itemized and the aggregate deducted from the amount to be paid into the State Treasury, as provided by law. If any insane person or inebriate dies at any time while his estate is liable for his care, support, and maintenance and other expenses at a State hospital, the claim for the amount due may be presented to the executor or administrator of his estate, and paid as a pre-

ferred claim, with the same rank in order of preference, as claims for expenses of last illness.

California Welfare and Institutions Code:

§6652: "The Department of Mental Hygiene shall collect all the costs and charges mentioned in Section 6650, and may take such action as is necessary to effect their collection within or without the State. The Director of Mental Hygiene may, however, at his discretion, refuse to accept payment of charges for the care, support, and maintenance in a state hospital of any insane or mentally ill person or inebriate who is eligible for deportation by the federal immigration authorities."

California Welfare and Institutions Code:

§6658: "The Department of Institutions may in its own name bring an action to enforce payment for the cost of determining the insanity of any person and securing his admission into a State hospital when his estate or any person is liable for the same, or to recover for the use and benefit of any State hospital or for the State the amount due for the care, support, maintenance, and expenses of any patient or inmate therein, against any county, or officer thereof, or against any person, guardian, or relative liable for such care, support, maintenance, and expenses."

Texas Probate Code, §423:

"Where an incompetent has no estate of his own he shall be maintained:

(a) By the husband or wife of such person, if able to do so; or, if not,

(b) By the father or mother of such person, if able to do so; or if not,

(c) By the *children* and grandchildren of such person, respectively, if able to do so; or if not,

(d) By the county in which said person has his residence."

Appendix B

(1) OPINION, SUPREME COURT OF TEXAS.

No. A-6363

In the Supreme Court of Texas

From Dallas County, Tenth District.

State of California, Department of Mental Hygiene,
Petitioner,
vs.
Dale W. Copus,
Respondent.

MAJORITY OPINION.

The State of California, petitioner, sued respondent, Dale W. Copus, now domiciled in Texas, for money expended by the State in the care, support and maintenance of his mother, an incompetent inmate of a state institution. A judgment for the full amount sued for was reversed and rendered by the Court of Civil Appeals. 301 S.W. 2d 217. We concur in the holding of the Court of Civil Appeals that no recovery can be had for support furnished after respondent removed to and became domiciled in this state. But we disagree with the conclusion that the Texas two-

year statute of limitation would apply to that portion of the claim arising prior to the removal of the respondent and that the maintenance of this action would be contrary to our public policy.

Prior to the 16th day of July, 1951, Copus was a resident citizen of the State of California. On that date he changed his domicile and residence to the State of Texas where he has continued to reside. For a number of years prior to the son's removal to Texas the mother had been continuously and was at the time of the filing of this suit a patient in one of the California state hospitals.

By California statute an adult son is legally obligated to reimburse the state for sums expended by the state in the care and maintenance of an indigent parent in a state institution. Additionally the statute provides (Section 345, Code of Civil Procedure) as follows: "The limitations prescribed in this chapter apply to actions brought in the name of the State or county or for the benefit of the State or county, in the same manner as to actions by private parties, except that actions for the recovery of money due on account of the support of patients at State or county hospitals may be commenced at any time within four years after the accrual of the same." Pursuant to the provisions of the Welfare and Institutions Code the Director of Mental Hygiene of California fixed the rate for the care and support of this incompetent mother at $40.00 per month as of the 1st day of July, 1944. This rate was continued until the 1st day of August, 1951, when the Director increased the rate

to $90.00 per month. That rate was continued up to the time of the filing of this suit. The State of California sued respondent in the Texas court for the support of his mother at the rates prescribed for a period of four years prior to the bringing of this suit.

Three questions are presented: (1) Does the claim asserted by the State of California against Copus constitute a continuing obligation enforceable by the Texas courts for the mother's support and maintenance that accrued after Copus has removed to and become domiciled in Texas? (2) Does the Texas two-year statute of limitation apply to this cause of action rather than the law of California? (3) Is the enforcement of this claim contrary to the public policy of the State of Texas?

No clear cut answer to these questions can be found by a search of the Texas authorities, at least in so far as the first two are concerned, but a review of the decisions in this and other jurisdictions impels the conclusion that all three should be resolved in the negative.

The general rule rather universally recognized is that the statutes of a state ex proprio vigore have no extraterritorial effect. It must be concluded, therefore, that the California statute could not create a legal obligation upon a citizen of Texas who was not a citizen of California when the obligation arose, that is, at the time the mother became institutionalized in California or at any time thereafter. We are aware of no rule of law that would make the obligation a continuing one after removal from California

even though it attached to him while a residen
that state. Citizens of a state equally share the
dens and privileges of citizenship regardless of w
or how that status is attained. To say that the
port statute compelled liability for that period of
after the respondent moved to Texas would seem
deny to him equality with other citizens of the st

Petitioner contends that the obligation statuto
imposed is quasi or constructively contractual.
that premise it invokes the universal rule that the
lidity and interpretation of a contract are to be de
mined according to the law of the state where the
tract is made and if valid there it is likewise valid
where. To support this premise petitioner relies
the decision in State v. Stone, 271 S.W. 2d 741,
Civ. App., holding a similar Texas support obliga
to be quasi contractual and thus a legal charge aga
the estate of the deceased obligor. But the claim in
Stone case matured during the lifetime of the obli
the only question being whether the debt could be
lected after his death from the estate. The court
not hold that the obligation survived the fath
death to the extent of making the state liable for
care and maintenance furnished to the son after
father's death. We think that the debt here is no
such a contractual nature as to impose legal liab
on the respondent after he ceased to be a citize
California and became domiciled in Texas.

This cause of action in so far as it concerns the
cruals after respondent's removal to Texas canno
said to have arisen while respondent was under

legislative jurisdiction of California. Restatement Conflict of Laws, Sec. 457, puts it this way:

> "A state has legislative jurisdiction to impose upon one person a duty to support another person if
>
> (a) the person to be supported is domiciled within the state and the person to support is subject to jurisdiction of the state, or
>
> (b) the person to support is domiciled within the state although the person to be supported is not subject to the jurisdiction of the state, or
>
> (c) both parties are subject to the jurisdiction of the state, though neither is domiciled there."

In Berkley v. Berkley, ... Mo. ....., 246 S.W. 2d 804, the wife domiciled in California sued her husband, domiciled in Missouri, to recover a sum expended for the support of their minor child who was in the care and custody of the mother. The parties, prior to their separation, had resided in and were citizens of California. The defendant sought to have the California law applied that would relieve him of this obligation. The court to the contrary, held that the law of Missouri would control in this action.

Yarborough v. Yarborough, 290 U.S. 202, 54 Sup. Ct. 181, 78 L. Ed. 269, cited and relied upon in Berkley v. Berkley, supra, in passing upon a somewhat similar conflict decided:

> "That the character and extent of the father's obligation, and the status of the minor, are determined ordinarily, not by the place of the mi-

> nor's residence, but by the law of the father'
> domicile."

The law thus announced would control in the situatio
we have here. The State of Texas does not expressl
and unqualifiedly impose upon a son a duty to reim
burse the State for moneys expended and charged b
the State for the support of an indigent parent i
state hospitals. Vernon's Civil Statutes, Art. 3196a
Section 2. We hold there can be no recovery by th
State of California against respondent for suppor
rendered to his parent after respondent removed fron
the State of California and become domiciled in thi
State.

Petitioner relies partly upon our uniform Recipro
cal Enforcement Act, Article 2328b, and particularl
upon Section 7 thereof reading:

> "Duties of support enforceable under this law
> are those imposed or imposable under the laws o
> any state where the alleged obligor was presen
> during the period for which support is sought o
> where the obligee was present when the failure t
> support commenced, at the election of the obligee
> * * * ."

But whether entitled to or not, the petitioner did no
bring its suit under the provisions of this act nor com
ply therewith. We hold, therefore, that respondent i
not liable for any sums accrued after his removal t
this state.

As to the second question, namely, the applicabilit
vel non of the Texas two-year statute of limitation
the general rule is that questions of substantive law

are controlled by the laws of the state where the cause of action arose, but that matters of remedy and of procedure are governed by the laws of the state where the action is sought to be maintained. Home Ins. Co. v. Dick et al., 15 S.W. 2d 1028 (Com. App.) reversed on other grounds 281 U.S. 397, 74 L. Ed. 926. To this rule there are exceptions.

The weight of authority favors the rule or exception to the foregoing general rule that where the statute creates a right and also incorporates a limitation upon the time within which the suit is to be brought, the limitation qualifies the right so that it becomes a part of the substantive law rather than procedural, and that unless suit is brought within the time allowed by statute no right of action can be maintained even though the law of the forum provides for a longer period of limitation. Stumberg Conflict of Laws, 2d Ed. p. 150.

Some courts have gone further in holding that in such a situation the lex loci would prevail even though the time had elapsed under the limitation statute of the forum. This exception, as stated in 53 C.J.S., Limitation of Actions, Sec. 30, is as follows:

> "Where by statute a right of action is given which did not exist by the common law, and the statute giving the right fixes the time within which the right may be enforced, the time so fixed becomes a limitation or condition on such right, and will control, no matter in what forum the action is brought, and such rule does not make the general provisions of the statute of limitations existing in the jurisdiction where the liability was created operate extraterritorially. * * * ."

See also 15 C.J.S., Conflict of Laws, Sec. 22e.

Although there exists quite a cleavage among the authorities as to the validity of this exception,[1] we prefer to follow those decisions that would treat the limitation in the California statute as substantive and not procedural. In Theroux v. Northern P. R. Co., 27 U.S. App. 508, 64 Fed. 84, the Court reasons as follows:

> " 'Where a statute confers a new right, which by the terms of the act is enforceable by suit only within a given period, the period allowed for its enforcement is a constituent part of the liability intended to be created, and of the right intended to be conferred. The period prescribed for bringing suit in such cases is not like an ordinary statute of limitations, which merely affects the remedy. It follows, of course, that if the courts of another state refuse to permit the cause of action to be sued upon during a part of the period limited by the foreign law, to that extent they refuse to give effect to the foreign law, and by so doing impair the right intended to be created.' "

Other cases supporting this theory are: Norman v. Baldwin, 152 Va. 800, 148 S.E. 831; Brunswick Terminal Co. v. National Bank, 99 F. 635, 48 L.R.A. 625; Negaubauer v. Great Northern Ry. Co., 92 Minn. 184, 99 N.W. 620; Nick Maki v. George R. Cooke Co., 124 F. 2d 663, and Wilson v. Massengill, 124 F. 2d 666. The latter two cases expressly approve the doctrine advanced in Theroux v. Northern P. R. Co., supra.

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[1] 68 A.L.R. pp. 217-222, 146 A.L.R., pp. 1356-1360. 35 Tex. Law Review 95.

Strictly speaking, we think these two so-called exceptions to the general rule, that the law of the forum controls as to procedural matters, are not exceptions at all because the limitation on the statutory right is regarded as substantive and not one of remedy.

The contrary view, namely, that the limitation statute of the forum will control is expressed in Tieffenbrun v. Flannery, 198 N.C. 397, 151 S.W. 857, and Rosenzweig v. Heller, 302 Pa. 279, 153 A. 346, and others.

Again the United States Supreme Court in Engel v. Davenport, 271 U.S. 33, 70 L. Ed. 813, 46 Sup. Ct. 410, in reversing the California decision, 194 Cal. 344, 228 P. 710, held the limitation provision in the Federal statute to be controlling since the right to maintain the suit at any time within two years was a substantive right, an essential part of the cause of action so created, and not merely remedial, the Supreme Court saying that: "As a provision affecting the substantive right created by Congress in the exercise of its paramount authority in reference to the maritime law, it must control in an action brought in a state court under the Merchant Marine Act, regardless of any statute of limitation of the state." It may be argued that the Federal statute enacted by the Congress in a field over which it has paramount authority might rest on a different basis from that of state legislative action. On the other hand it is difficult to see how there is a difference in principle because the State Legislature is equally paramount within its own jurisdiction.

For yet another reason, it would seem proper here to apply the California statute with respect to the time limitation. Although we have a general statute of limitations of two years, Art. 5526, Vernon's Ann. Civ. Stat., applicable to "actions for debt where the indebtedness is not evidenced by a contract in writing," it would not apply to a demand of this nature brought by the State of Texas. It would seem proper, therefore, under the circumstances, to extend comity to the State of California and uphold the right of that state to commence this action within the four-year period as provided in the California statute.

It cannot be said that the maintenance of this suit in Texas and the rendition of a judgment in California's favor for the amount accruing before the respondent became a citizen of Texas is against the public policy of this state.[2] It is true that our Legislature has not seen fit to enact a statute to impose legal liability upon a son for the maintenance of a parent inmate in a state institution, although it does by statute obligate the husband or wife and the father or mother, if financially able, to bear the expense of maintaining a patient in a state hospital where the patient has not sufficient estate of his own. Art. 3196a, Sec. 2, Vernon's Ann. Civ. Stat. Sec. 5 of that article permits the state to proceed to collect the amount from those so obligated in a civil action. And not only that, but our Probate Code, Sec. 423, requires that an incompetent person, having no estate of his

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[2]35 Tex. Law Review 759.

own, shall be maintained by the husband or wife a
by the father or mother and even by the children a
grandchildren, if able to do so.

Although our Legislature has not adopted the p
icy of requiring an adult son to support a parent or
reimburse the state, under the circumstances involv
here, it is quite another thing to say that it is agai
the public policy of this state to enforce the Califor
obligation, and particularly so when our state
statutes of similar import and character. Strawn M
cantile Co. v. First National Bank of Strawn, (T
Civ. App.), 279 S.W. 473; Texas & N.O. Ry. Co.
Miller, (Tex. Civ. App.), 128 S.W. 1165.

In this respect we think the rule is correctly
nounced in Herrick v. Minneapolis & St. L. Ry. C
31 Minn. 11, 16 N.W. 413: "To justify a court in
fusing to enforce a right of action which accrued
der the law of another state, because against the pol
of our laws, it must appear that it is against g
morals or natural justice, or that for some ot
reason the enforcement of it would be prejudicial
the general interests of our citizens." This rule
been approved by the United States Court of Appe
for the Fifth Circuit. Evey v. Mexican Central R
way Co., 81 F. 304; Burt v. Isthmus Development C
218 F. 2d 353.

This California statutory requirement of supp
does not run counter to good morals or natural j
tice or appear prejudicial in any way to the gene
interest of the citizens of Texas.

We, therefore, hold that the petitioner is entitled to judgment for the sum of money charged by the State of California for the support of his mother while the respondent was a citizen of that state that accrued within four years of the commencement of this suit and will be denied recovery for any sums that accrued after respondent's removal to this state.

The judgments of both the trial court and the Court of Civil Appeals are reversed and the cause remanded to the trial court for the entry of a decree in accordance with the foregoing views.

Frank P. Culver, Jr.
Associate Justice.

FPC:A

Opinion delivered: Jan. 15, 1958.

No. A-6363

In the Supreme Court of Texas

From Dallas County, Tenth District.

State of California, Department of Mental Hygiene,
Petitioner,

vs.

Dale W. Copus,
Respondent.

Dissenting Opinion

I respectfully dissent.

The majority correctly announces that this is a cas of first impression in Texas. Under the particula facts of this case, and because of the announced poli cies of the several states, including Texas, in the re cent enactment of Uniform Support Acts and th Probate Code of Texas, I believe this to be a case o first impression in the United States.

The majority opinion states that its decision i based on decisions which it cites from other juris dictions. I do not believe that those opinions are con trolling. They will be discussed herein.

It seems to me that the better rule is stated in American Jurisprudence 310, Conflict of Laws §11

> "The fundamental question determinative the enforcement of statutory rights arising another state is whether there is a substant right originating in one state and a correspo ing liability which follows the person agai whom it is sought to be enforced into anot state. Such a right, arising under a local statu will be enforced ex comitate in another st *unless there is a good reason for refusing to force it.* It will be enforced, not because of existence of the statute, but because it is a ri which the plaintiff has legitimately acquired a which still belongs to him."

The majority opinion relies on what it says is "universally recognized rule that no statutes of state *ex proprio vigore* [by their own force a vigor] have extraterritorial effect." The cases g erally cited for that proposition are founded on premise that one nation or state will not enforce statute of another nation or state which is penal nature, or which, from a civil standpoint, is contra to the public policy of the enforcing state or nati The California statute, as involved here, is not pe and the majority concedes that the statute is against our public policy. The *ex proprio vigore* cas therefore, are not controlling here.

This doctrine under which nations or states not enforce "foreign" statutes is set out in 11 A erican Jurisprudence 310:

"There are several situations in which it is wel established that the forum will not enforce a for eign statutory right. Thus, a right given b statute will not be enforced by the courts of an other jurisdiction if the statute is against th policy of the law of the forum, if the enforcemen of the right would work injustice to the citizen of the state where the action is brought, if th right, by the terms of the statute creating it, i to be enforced by prescribed proceedings withi the state of its enactment, or if it is of such kind that, with a due regard for the interests o the parties, a proper remedy can be given onl in the jurisdiction where it is created."

The negative of the rule is that we will not enforc the California statute if it is against our publi policy, if it would work an injustice, if it is penal i nature, if the right can be enforced only by proceed ings of the enacting state, or if the proper remed can only be given in the enacting state. The positiv rule, above set out, is that the right "will be enforce *ex comitate* [out of comity] unless there is goo reason for not enforcing it."

As will be set out hereinafter, there is no evidenc in this record that the enforcement of the statute wi work an injustice. The remedy and procedure ar available here, and the statute is not against our pub lic policy. In short, I see no good reason for not en forcing California's rights and those of the dependen mother.

The respondent here, Copus, and his mother ha been residents of California for many years. Whil both were there, she became mentally ill. She wa

placed in a California hospital and is still there. T
need for care which began when both were reside
of California continues. Under the California la
Copus is required to contribute to his mother's su
port. His moral duty[3] became, under California la
his legal duty. The legal obligation attached to Cop
while he was a California resident. Nothing has ha
pened to relieve him of that obligation except that
crossed state lines and took up residence here.

The majority opinion recognizes Copus's duty a
the validity of California's claim and enforces it
Texas with a Texas decree for that period of ti
when he was in California and until he came
Texas. As I view it, the bare legal point here is: do
the fact that Copus moved to Texas, standing alo
relieve him of his legal obligation to contribute the
after to his mentally-ill mother's support? I thi
not. Texas should not become a haven for deserti
providers who would ignore or repudiate their du
to support.

Viewed the other way, if Copus and his moth
had been Texas citizens and he were obligated
Texas to contribute to her support, should he be a
to shirk that responsibility by just moving out of t
State?

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[3]The First Commandment is "Honor thy father and thy mot
. . .", Exodus 20:12. "Like others in this code of laws, it is direc
to the adult citizen who is burdened with the care of an a
parent, and is a warning against the heathen habit of abandon
the aged when they can no longer support themselves." "This c
mandment most especially refers to the treatment of helpless a
dependents." Medical science has progressed so efficiently t
modern nations are comprised more and more of old people. 1
terpreter's Bible 985, Abingdon-Cokesbury Press, 1952.

There is no evidence before us that Copus is unable to support his mother, that other relatives should bear or share in the burden, or that she has forfeited any right to support from her son. There is no evidence that the original $40 per month or the subsequent $90 per month of support is excessive, discriminatory, or inequitable. We do not have before us a situation in which liability to support arises after the obligor has left the state or a situation in which the obligor has never been in the state in which the person to be supported resides. The only defense offered is that Copus left California and came to Texas.

The majority opinion correctly states that it is not against the public policy of Texas to enforce such an obligation. Our policy in that regard has been fixed in comparatively recent times by the enactment of our Uniform Support Act[4] and the Texas Probate Code.[5]

Section 423 of the Probate Code provides:

> "Where an incompetent has no estate of his own, he shall be maintained (a) by the husband or wife . . . if able to do so; or if not (b) by the father or mother . . . if able; or if not, (c) *by the children and grandchildren of such person* respectively if able to do so; or if not (d) by the county . . . ."

The Legislature has thus determined that it is the policy of Texas that under the circumstances above set out, an incompetent person (such as the mother

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[4]Acts 1951, 52nd Leg., ch. 377, p. 643, as amended by Acts 1953, 53rd Leg., ch. 374, p. 907, being Article 2328b, Vernon's Texas Civ. Stat.

[5]Acts 1955, 54th Leg., p. 88, ch. 55.

here) shall be supported by her children, if able. The mother here was incompetent.

Section 8 of our Uniform Support Act provides that a *State* [California] shall have the same right to enforce support as the person to be supported [the mother] has; under Section 7, "the duties of support enforceable under this law are those imposed under the laws of any state [California] . . . *where the obligee* [the mother] *was present when the failure to support commenced. . . .*" The mother was certainly present in California when this obligation arose.

Section 9 says that, "All duties of support are enforceable . . . irrespective of relationship between the obligor [Copus] and the obligee [his mother]. An exception not applicable here is made in Section 7 regarding alimony to a former wife.

It is true that California did not attempt to comply with the Uniform Support Act. This case would have been much easier if it had. Under that Act, a California Court would have certified to a Texas Court the identity of the parties, the duty to support, and law regarding the support requested. However, all that is required to have been done or which could have been done by the certifying court in California under the Support Act has been directly accomplished and proved in the Texas district court. The facts and the California law are stipulated. So here, in my opinion, we have the substance of the Uniform Support Act but not the form.

Section 3 of the Act states that "The remedies herein provided are *in addition* to and not in substitution for any other remedies." It is not intended to be the exclusive remedy. *Ex Parte Helms,* 152 Tex. 480, 259 SW2d 184 (1953). To say the least, it does not evidence an intention that the policy of the State of Texas is to deny enforcement of a duty fixed on Copus when he left California and came to Texas and which, but for his removal to Texas, still exists.

The majority opinioin holds that to require Copus to contribute to the support of his mother would be to deny him the equal protection of the laws. I disagree. Both Texas and California have statutes authorizing the Court to require support of parents. Moreover, if the Uniform Support Act had been invoked and followed here, and a recovery allowed under it, that Constitutional point would be the same.

I do not believe that the equal protection clause was intended to relieve a person of his duties by crossing state lines. The reasonableness of the classification under California law did not become unreasonable or unconstitutional because Copus moved to Texas. The requirements of the equal protection clause are met if the laws of each state apply with equal force to persons similarly situated. A classification is repugnant to this provision when it is unreasonable, arbitrary, or capricious. Such Classifications are not unreasonable when based upon sound considerations of public policy. Carried to its logical extreme, the holding would render all reciprocal laws unconstitutional until they are enacted by all states.

There is one Ohio case, not cited in the majority opinion, which reaches the same result as the majority opinion here on the equal protection clause, but is distinguishable. In *Pennsylvania v. Mong,* 117 NE2d 32 (1954), the defendant's indigent father lived in Pennsylvania. Pennsylvania brought suit in Ohio, under the Uniform Support Act, against an Ohio son. Ohio, however, had a statute which denied support from a child to a parent who had abandoned such child before the child became 16 years of age. The Ohio law in this regard was substantially different from the Pennsylvania law. The parent there had so abandoned the child. Recovery was denied in Ohio by a divided court on the ground of equal protection; i.e., that Ohio children who had been abandoned may not be required to contribute to the support of the parent in Ohio. So it would be discriminatory to make an Ohio son support his parent (who had abandoned him) in another state. The Ohio statutory exception is not unreasonable, and it fixed the policy of Ohio as being affirmatively opposed to the support of the parent under the circumstances. The case, therefore, to me, reaches the correct result on the wrong ground.[6]

De Brimont v. Penniman, 7 Fed Cases 309 (No. 3715), although not cited by the majority opinion, might also support the majority view; but it also is distinguishable. There an American girl in France

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[6]The case is noted and criticized in 67 *Harvard Law Review* 1435; 102 *University of Pennsylvania Law Review* 938; and 40 *Virginia Law Review* 489.

married a Frenchman. Her parents went to France after the marriage. When they returned to New York, the French son-in-law sued the American parents on a French judgment for support under a French statute which authorized son-in-law and father-in-law support. The Federal Court correctly denied liability. The Court found that the French statute was "hostile to the policy of this country." The Court recognized, however, that in many of our states, "The duty of parents and grandparents, and reciprocally, of children and grandchildren when of sufficient ability, to provide for the necessary support . . . is declared and enforced."

The majority opinion cites and relies on Section 457 of the Restatement of Conflict of Laws. The Restatement was prepared in 1934 before the preparation and adoption of the Uniform Support Act. That Act was designed in part to combat an alleged "indifference of many states which would refuse or neglect to enforce support in favor of out-of-state dependents on the theory, often tacitly admitted, that one state has no interest in helping another state rid itself of the burden of supporting destitute families."[7]

Thus if this section of the Restatement ever expressed the policy of the State of Texas, it was superseded by our adoption of the Uniform Support Act in 1951.

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[7]Commissioners' Prefactory Note in *Handbook, National Conference of Commissioners on Uniform State Laws*, 291, 292 (1952), cited in "Interstate Recognition of Support Duties" by Albert A. Ehrenzweig, 42 *California Law Review* 382, at 383 (1954).

The majority opinion cites *Berkley v. Berkley,* 246 SW2d 804 (Mo. Sup. 1952). There a California wife brought suit in Missouri against her husband, a resident of Missouri, for reimbursement for funds expended by her for the support of their minor child who lived with the mother in California. She had worked to support the child, but the father refused to contribute to the child's support. The father attempted to set up in Missouri a technical defense that, under California law, a father is not liable for reimbursement to the mother for the support of a minor child unless he expressly agrees to do so. The Missouri Court held that the father was a citizen of Missouri, and the law [public policy] of Missouri required him to support his minor children whether they were in Missouri or not.

To the *Berkley* case could be added *Commonwealth v. Acker,* 83 NE 312 (Mass. 1908, noted in "Simplifying the Conflict of Laws," by Dean E. S. Stinson, 36 *Am. Bar Assn. Journal* 1003). There Acker, his wife and child lived in Nova Scotia. He abandoned them and got a job in Massachusetts. His wife went also to Massachusetts, although separated from her husband. The child was left in Nova Scotia. Acker was prosecuted in Massachusetts for failure to support the child in Nova Scotia. (No evidence was introduced as to the law of Nova Scotia.) In sustaining Acker's conviction, the Court held:

> "The offender is here within our jurisdiction. While residing here, he ought to make provision for the support of his wife and minor child,

> whether they are here or elsewhere. If he fails to do so, his neglect of duty occurs here without reference to the place where proper performance of his duty will confer benefits."

Both cases are properly decided. Where the policy of the forum is to require support, or where its policy is at least not to the contrary and the duty arises out of a valid statute of a sister state, the duty to support should at least be recognized. Here, without regard to equitable considerations, we simply refuse to recognize the mother's and California's rights and Copus's duties under the California statute after he moved to Texas.

The *Berkley* case is annotated in 34 A.L.R. 2d 1460 (1954). The annotator states the rule to be:

> "A state may be limited in the conflict of laws rules by provisions of the Federal Constitution, and in particular by the full faith and credit clause, the equal privileges and immunities clause, and the due process clause. . . .
>
> *"None of these clauses prevents a state from choosing the law of the father's or the child's domicile as governing the existence and extent of the father's duty to support the child."*

The remaining case cited by the majority is the *Yarborough* case, 290 U.S. 202 (1933). There a husband and wife were divorced in Georgia. By agreement between the spouses, a lump sum was awarded and paid by the husband to the wife for the support of their minor child. When money had been exhausted, and the child was living in South Carolina

with her grandfather, a suit was brought in South Carolina to require the father, a resident of Georgia, to make further provision for the child's support. An award for the child's support, based upon her need, was affirmed by the Supreme Court of South Carolina. The Supreme Court of the United States reversed the South Carolina judgment and held that the Georgia judgment precluded any further claim for support of the child.

Justices Stone and Cardozo, with whom I agree, dissented upon the ground that Georgia had full authority to adjudge the rights of the parties as of the time of the adjudication, but that South Carolina had jurisdiction to require further support on changed conditions. "The measure of the duty is the need of the child and the ability of the parent to meet those needs at the very time when the performance of the duty is invoked. Hence, ilt is no answer . . . that at some earlier time provision was made for the child, which is no longer available. . . ."

The majority opinion in the *Yarborough* case is criticized by an eminent authority on Conflicts:

> "The decision seems unsound, in that the Georgia judgment was based upon conditions at the time of the original decree. Need of additional support in South Carolina upon change of domicile to that state was not before the Georgia court and for that reason was not adjudicated in the proceedings in the latter state. Actually, the [Yarborough] case only decides, however, that a judgment for a lump sum relieving a father from any further duty precludes a further

claim." Stumberg, *Conflict of Laws* (2nd Ed. 1951) p. 345.

The *Yarborough* case is also discussed in "Interstate Recognition of Support Duties" by Albert A. Ehrenzweig of the California Law faculty, 42 *Calif. L. Rev.* at 385 (1954). It is there said that the statement in the *Yarborough* case that "the character and extent of the father's obligation, and the status of the minor, are determined ordinarily not by the place of of the minor's residence but by the law of the father's domicile," is "mere dictum, lacks support in precedent, and is open to serious objections on ground of policy." In the words of Justice Stone, such a rule would enable a deserting provider "by the expedient of choosing a domicile other than the state where [his dependent] is rightfully domiciled, to avoid the duty that state may impose. . . ." 290 US at 225.

It should, of course, be the policy of the State to protect its citizens and its state's rights. But states' rights carry states' responsibilities. This being a case of first impression, it would be better to set a precedent of co-operation and enforcement of the duty which is not contrary to our own public policy. The better policy would be to minimize the loopholes which allow evasion of support responsibilities and duties. Such a policy is preferable to one which allows a person under a duty to support in his own state to cross a state line and figuratively thumb his nose at his home state and those to whom he owes the duty to support.

This Copus case was the subject of a leading article on "Policy Problems in Conflicts Cases" by Professor Joseph Dainow in 35 *Texas Law Review* 759 (June 1957). Concerning the problem, the author says:

> "Of course, it is a matter of permanent policy for a state to protect its own people, and if this policy were carried to its logical ultimate, it would greatly simplify the complications and confusion in conflicts cases. In fact, it could almost eliminate the whole subject of conflict of laws by favoring the local boy in all contests with a foreigner. * * * *
>
> "By its nature, a rule of conflict of laws generally contemplates the possibility of the decision being made in accordance with a foreign law. In a sense, this may be viewed as the relinquishment of a measure of sovereignty; more properly, it is the exercise of an attribute of sovereignty. In the process, it is possible that the application of a foreign law in accordance with the local conflicts rule would produce a result that is too undesirable to be permitted. To prevent something so utterly repugnant—a result that would run too much against the grain of a local society and its mores—there has been reserved an exceptional corrective under the name of 'public policy.' When no other regular legal technique will do the job, public policy is called upon to prevent the violation of 'some fundamental principle of justice, some prevalent conception of good morals, some deep-rooted tradition of common weal.' "

As conceded by the majority here, and as set forth in our Probate Code and our Uniform Support Law, the enforcement of the California statute is not contrary to our public policy. So far as I can ascertain, no provision of the constitution or laws of this State or the United States would prevent our honoring and enforcing the California statute. The authority first cited herein correctly states that such will be enforced unless there is good reason for refusing to enforce it. There being no good reason shown in this record, it should be enforced.

The Texas trial court found that "the liability of . . . Copus is a continuing one; and that the removal of the defendant [Copus] to Texas . . . does not discharge him from such continuing liability."

I would affirm the judgment of the trial court.

Joe Greenhill,
Associate Justice.

Associate Justices Griffin and Calvert join in this dissent.

JRG:mwb

Opinion Delivered:
Jan. 15, 1958.

(2) JUDGMENT.

No. A-6363

In the Supreme Court of Texas

From Dallas County, Tenth District.

January 15, 1958

State of California, Department of Mental Hygiene,

vs.

Dale W. Corpus.

This cause came on to be heard on writ of error to the Court of Civil Appeals for the Tenth District, and the original transcript and the transcript showing the proceedings had in the Court of Civil Appeals having been duly considered, because it is the opinion of the Court that there was error in the judgments of the courts below, it is therefore *adjudged, ordered,* and *decreed* that the judgments of the Court of Civil Appeals and District be, and hereby are, reversed and set aside, and that this cause be remanded to the District Court with instructions to render judgment in favor of petitioner (plaintiff), State of California,

Department of Mental Hygiene, and against respondent (defendant), Dale W. Copus, for the sum of money charged by the State of California for the support and maintenance of Lela S. Copus, mother of Dale W. Copus, while the said respondent, Dale W. Copus, was a resident citizen of California and within four years of the commencement of this suit, but denying such recovery by petitioner (plaintiff) against respondent (defendant) for any sums that accrued after respondent, Dale W. Copus, removed to, and became a resident of, the State of Texas, all in accordance with the opinion herein this day delivered.

"It is further ordered that petitioner, State of California, Department of Mental Hygiene, have and recover of and from respondent, Dale W. Copus, and the surety on his appeal bond, United States Casualty Company, the costs in this behalf expended and incurred in this Court and the Court of Civil Appeals, and that this decision, with a copy of the opinion, be certified to the District Court of Dallas County, Texas, for observance."

(3) MOTION FOR REHEARING.

No. A-6363

In the Supreme Court of Texas

From Dallas County, Tenth District.

State of California, Department of Mental Hygiene,
Petitioner,
vs.
Dale W. Copus,
Respondent.

Petitioner's Motion For Rehearing.

To said Honorable Court:

Now comes the State of California, Petitioner in the above entitled and numbered cause, and respectfully moves the court to set aside its judgment, rendered on the 18th day of January, 1958, reversing and rendering in part and affirming in part both the judgment of the trial court and the judgment of the Court of Civil Appeals, and to grant it a rehearing and affirm in all respects the judgment of the trial court, and as reasons, therefore, would respectfully show the court as follows:

First Point.

Having found that the enforcement of Section 6650 of the California Welfare and Institutions Code was not against the public policy of the State of Texas, it was error for this Honorable Court to refuse to give such statute full faith and credit in the courts of this State; such refusal being contrary to Art. IV, Sec. 1 of the Constitution of the United States.

Second Point.

It was error for this Honorable Court to hold that Section 6650 of the California Welfare and Institutions Code could not be enforced after July 16, 1951, when Respondent became a resident of the State of Texas, for the reason that such holding is contrary to Art. IV, Sec. 1 of the Constitution of The United States.

Argument and Authorities Under Points 1 and 2.

We would respectfully point out that this Court has correctly held that the enforcement of the California Support Statute against a citizen of the State of Texas would not be repugnant to our own laws. In view of this holding no good reason, legal or otherwise, has been assigned why such statute should not be given extraterritorial effect. If this statute is not contrary to, nor in conflict with Texas laws then this court is bound and obligated to order its enforcement because of the "Full Faith and Credit" clause in the Constitution of the United States. In Chicago & A. R. Co. v. Wiggins Ferry Co. (1887), 119 U.S. 615, 30 Law. Ed. 519, our Supreme Court said:

> "Without doubt, the constitutional requirement Art. 4, §1, that 'full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every state,' implies that the public acts of every state shall be given the same effect by the courts of another state that they have by law and usage at home."

A like decision was reached by the Supreme Court in the Case of Smithsonian Institution v. St. John (1909), 214 U.S. 19, 53 L. Ed. 892. In passing upon the question whether a New York court should decide whether an Ohio statute contravened the Ohio Constitution the court said that New York should give full faith and credit to the Constitution of Ohio, and held that such duty to give full faith and credit to such constitution was as obligatory as the similar duty in respect to judicial proceedings of that state. The courts of this State have recognized that they are bound by the "Full Faith and Credit" clause of the Federal Constitution. The case of American Express Co. v. North Ft. Worth Undertaking Co., 179 SW 908 (Civ. App.) involved a judicial proceeding, but in passing upon the effect of Art. IV Sec. 1, the court had this to say:

> "The Constitution of the United States, which with us is all-pervading and all-controlling, in section 1 Art. 4 declares:
>
> 'Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.'

> It is to be observed that the 'full faith and credit' enjoined by this section of the Constitution takes in not only the records and judicial proceedings, but also the public acts of another state, *such as laws enacted by legislative bodies,* and it is very uniformly held that in construing laws of another state they will be given that construction and effect that is given them by the court of final resort in the state where enacted. These principles are too well known to require the citation of authority, and they are to be applied in the determination now to be made."

In the case of Galveston, H. & S. A. R. Co. v. Wallace, 223 U.S. 490, 56 L.ed. 522, the United States Supreme Court said:

> "At one time there was some question both as to the duty and power to try civil cases arising solely under the statutes of another state. But it is now recognized that the jurisdiction of state courts extends to the hearing and determination of any civil and transitory cause of action created by a foreign statute, provided it is not of a character opposed to the public policy of the state in which the suit is brought. Where the statute creating the right provides an exclusive remedy to be enforced in a particular way, or before a special tribunal, the aggrieved party will be left to the remedy given by the statute which created the right."

There are numerous decisions by the Supreme Court on this subject. Some holding that a state is bound to give full faith and credit to the laws or statutes of a sister state and some to the contrary. Without exception, where the court has held that such statutes

need not be followed, there has been a conflict or repugnancy between the laws of the two states. We submit that this was the reason for the decision in the case of Yarborough v. Yarborough, 290 U.S. 202, which is relied on by the majority opinion. The court, in that case said:

> "Even though the Constitution does not deny to Georgia the power to indulge in such a policy for itself, it by no means follows that it gives to Georgia the privilege of prescribing that policy for other states in which the child comes to live. South Carolina has adopted a *different policy,* etc."

It is quite understandable that there are many situations where the court would not or could not follow the statutes of another state. This is well illustrated in the case of Union Trust Co. v. Grosman, 245 U.S. 412, 62 L.Ed. 368. A wife, while temporarily residing in Illinois executed a note as guarantor of her husband. Both were residents of Texas. By the law of Illinois the contract was valid, but it was against the public policy of Texas, as subjecting her separate property to the payment of the demand. In the case at bar, in view of Probate Code, Sec. 423, and our own Support Act, Art. 2328b, certainly this court would be bound by the "Full Faith and Credit", clause of the Constitution of the United States.

In Tennessee Coal, I. & R. Co. v. George, 11 Ga. App. 221, affirmed 233 U.S. 345, 58 L.ed. 997 the Georgia court of appeals laid down the rule that the full faith and credit clause of the Constitution, and the laws of Congress enacted pursuant thereto, require

courts of the several states to enforce any transitory cause of action created by a statute of a sister state, not opposed to the settled policy of the state wherein it is sought to enforce a cause of action

Thus, it is clear, that the test is: Is the California Statute contrary to good morals and against the public policy of Texas? This question has been answered by this Honorable Court in the negative. This being so, we believe that this Honorable Court has no alternative but to give the statute full faith and credit in accordance with the Constitution of the United States.

Third Point.

This Honorable Court erred in holding that the accruals, after respondent moved to Texas, did not arise while respondent was under the legislative jurisdiction of California.

Argument and Authorities Under Third Point.

The case of State v. Stone, 271 S.W. 2d 741, was cited by petitioner for the sole purpose of showing that this type of obligation is contractual. If the obligation amounts to a contract between the State of California and the children of Lela S. Copus it would continue to be a contract until cancelled by one or both of the parties. The monthly payments on the contract (or accruals, as the court has called them) certainly should not be confused with the obligation or contract itself which was initiated while respondent was under the jurisdiction of California. It cannot be said that respondent's removal to Texas constituted a cancellation or repudiation of the contract

or obligation, and until such cancellation took place the obligation or contract was a continuing one as a matter of law.

10 Texas Jurisprudence 340:

> "Provisions for payment in installments do not prevent the contract from being a continuing one, or terminate it at the end of any particular term for which payment has been made."

Having once incurred this obligation by placing his mother in the hospital respondent would be liable for her care until she recovered or was removed therefrom, regardless of whether payment was to be made in a lump sum, by the month or year. The case of Page v. Thomas, 47 S.W. 2d 894 (Civ. App.) (reversed on other grounds by the Supreme Court, 71 S.W. 2d 234), involved facts where a bus driver delivered seriously injured persons to a hospital, promising payment for their care. Two days later he sought to limit his agreement to avoid future charges. The court quoted with approval from the case of St. Barnabas Hospital v. Minneapolis, etc., 70 N.W. 1126:

> "The contention of the plaintiff and the view of the law on which the court submitted the case to the jury was that under the circumstances the agreement was not one which the defendant had an absolute right to terminate at any time merely by giving notice; that the defendant having brought a seriously injured man to the hospital and the plaintiff having taken him in and accepted him as a patient at the request of defendant, and on the faith of its promise to pay, it would remain liable, notwithstanding notice to the contrary, until it removed him, or until he

> sufficiently recovered, so that he could have been dismissed or put out of the hospital without great danger to his health or life, unless it appeared that he had means of his own out of which plaintiff could have collected its pay. This was an implied condition, upon which the contract could be terminated."
>
> "The plaintiff having taken in a helpless and severely injured man at the defendant's request, and upon its promise to pay for an indefinite time, it would be monstrous if the defendant could, the very next day summarily withdraw its promise, leave the sick man on plaintiff's hands, and put it to the alternative of either keeping and caring for him without pay, or else cruelly and inhumanly throwing him into the street".

It is submitted that each monthly payment was not a separate and distinct obligation, and until his mother was removed from the hospital it was respondent's financial responsibility to pay for her care whether he remained in California or removed to Texas.

Fourth Point.

This Honorable Court erred in holding that petitioner did not comply with the Texas Support Act, Art. 2328b.

Argument.

Of course it has been conceded that petitioner did not bring its suit under the act. It did not specially plead the statute and the suit was not prosecuted by the District Attorney, but it is submitted, that in all other respects petitioner did comply with the act. A

verified petition was filed in the District Court and that court had before it all of the facts and the law of California required to be furnished by the statute. Respondent was accorded all of the rights and privileges in this lawsuit which he would have had if Art. 2328b had been strictly complied with by petitioner.

As was pointed out by Justice Greenhill in the dissenting opinion, all that was required of the certifying court in California has been directly accomplished and proved in the Texas district court. The facts and the California law were stipulated and all that is lacking is the form of the action, not the substance.

Wherefore, petitioner prays that this motion be granted, and that upon rehearing, the trial court's judgment be in all things affirmed.

Respectfully submitted,
Edmund G. Brown,
Attorney General,
Office of the Attorney General,
State Building,
San Francisco, California.
Chancellor & Wood,
1208½ Main Street,
Dallas, Texas,
Attorneys for Petitioner.

Certification.

A copy of the foregoing, "Petitioner's Motion for Rehearing" has been furnished to the Hon. Pat Reed, Attorney at Law, Route No. 7, Box 394-G, Dallas, Texas, Attorney for respondent.

(4) DENIAL OF REHEARING.

No. A-6363

In the Supreme Court of Texas

From Dallas County, Tenth District.
February 19, 1958

State of California, Department of Mental Hygiene,

vs.

Dale W. Copus.

This day came on to be heard petitioner's motion for rehearing in the above numbered and styled cause, and, after due consideration, it is ordered that said motion be, and hereby is, overruled.

(5) OPINION, COURT OF CIVIL APPEALS.

Reversed and Rendered in Part, Affirmed in Part
March 21, 1957

No. 3442

In the Court of Civil Appeals for the
Tenth Supreme Judicial District
of Texas, at Waco

Dale W. Copus,
Appellant,

vs.

Department of Mental Hygiene, State of California,
Appellee.

Appeal from District Court
Dallas County

OPINION

This is a suit for debt instituted by the State of California, Department of Mental Hygiene, as plaintiff against Dale W. Copus as defendant. The facts are without dispute and are: Defendant Copus was a resident of California prior to 16 July 1951, on which date he changed his domicile and residence to Texas. Since 16 July 1951 defendant's residence and domicile have been in Texas. In October 1936 defendant's mother, Lela Copus, was adjudged mentally ill in California and admitted to the State Hospital in Cali-

fornia, where she has been a patient since. The California Welfare and Institutions Code, Sec. 6650, makes a son liable for the care, support and maintenance of a mother confined to a State hospital. Sec. 6651 of the California Code set $40 per month as the rate for such support prior to 31 July 1951 and $90 per month since such date. Such amounts as accrued above became due and owing to the State of California, subject only to a $50 credit paid by defendant on 12 June 1951.

The California Code of Civil Procedure, Sec. 345 (Limitations Applicable to Actions by or for the State or County: Exception: Action for support of State or County Hospital Patient), as applicable, reads as follows:

> "The limitations prescribed are * * *, except that actions for the recovery of money due on account of the support of patients at State or County Hospitals may be commenced at any time within four years after the accrual of same."

The defendant plead that the Texas Two Year Statute of Limitations is applicable and barred recovery prior to 21 May 1951 (two years prior to the filing of the suit); and further, that defendant is not liable for any support of his mother under the California statutes after 16 July 1951, the date that he removed from California to Texas.

Trial was before the court, which rendered summary judgment on the foregoing facts, that plaintiff State of California recover $3470 from defendant, which amount represented the accrued support at the

stipulated rates, from four years prior to the filing of the suit on 21 May 1953 to the date of judgment.

The Trial Court, upon request, filed Findings of Fact substantially as set out, supra; and Conclusions of Law as follows:

> "The court concludes that the two year statute of limitations pleaded by defendant is not applicable to said cause, but that the four year statute of limitations of the State of California is applicable, and, that in accordance therewith the court did not consider any items of said account that accrued more than four years prior to the commencement of this action on 21 May 1953.
>
> "The court further concludes that the liability of the defendant, Dale Copus, is a continuing one; and that the removal of the defendant from the State of California to the State of Texas on 16 July 1951, and his continued residence and domicile in Texas, does not discharge him from such continuing liability under the laws of the State of California, the defendant having been a resident of California at the time of the commencement of such continuing liability."

The defendant, Dale Copus, appeals, contending: (1) The Trial Court erred in applying the four year statute of limitations of the State of California, and in not applying the two year statute of limitations of the State of Texas. (2) The Trial Court erred in rendering judgment for any sum after 16 July 1951, in that defendant then being a bona fide resident of Texas, was not responsible for any support by virtue of any law of the State of California.

The foregoing present two questions to be answered: (1) Does California's four year statute of limitations or Texas' two year statute of limitations apply in the instant case? And (2) Is defendant liable after establishing residence and domicile in Texas?

Reverting to the defendant's 1st contention and the 1st question in this case—we have the State of California suing a citizen of Texas upon an obligation which arose by virtue of a California statute, in a Texas court.

28 Tex. Jur. p. 91, states the general rule as follows:

> "In accordance with the settled rule that the law of the place where an action is brought is controlling as to the remedy, an action brought in this state is governed by our statute of limitations, and not by the law of the place where the cause of action arose."

In Home Ins. Co. v. Dick, 15 SW 2d 1028, the Commission of Appeals says:

> "We might cite numerous other authorities in this state and out of it holding that statutes of limitation relate only to the remedy, and are controlled by the law of the forum irrespective of the place of the contract, but we consider this question too well settled to require further discussion", and: "Statutes of limitation have been uniformly held to affect the remedy only."

Broderick v. Pardue, CCA, W/E Dis., 102 SW 2d 253, says:

> "It seems to us that the general rule, and the one well established in this state, that the law of the lex fori governs in such a case" (where the

contention was made that a New York limitation statute applied in a suit based on New York law).

In Continental Supply Co. v. Hutchings, CCA, W/E Ref., 267 SW 2d 914, the Court says:

> "It has long been held that under the terms of the statute in question (Art. 5543) a defendant may invoke the Texas statutes of limitations if he has resided here for twelve months, though the action may not be barred under the laws of the state from which he emigrated."

The foregoing case reviews the history of the limitation statutes of Texas and points out that they were originally passed to encourage emigration to Texas.

Article 5526 R.C.S. provides that:

> "There shall be commenced and prosecuted within two years after the cause of action shall have accrued, and not afterward, all actions or suits in court of the following description: * * * Actions for debt where the indebtedness is not evidenced by a contract in writing."

In 1852 our Legislature enacted Art. 5543 R.C.S., providing:

> "No demand against a person who has removed to this state, incurred prior to his removal, shall be barred by the statute of limitations until he shall have resided in this State for twelve months."

Obviously Art. 5543 R. C. S. was enacted to prevent emigrants from invoking our statutes of limitations against obligations incurred in other jurisdictions, until they became bona fide inhabitants.

In Davis v. Howe, 213 SW 609, the Commission of Appeals (opinion adopted and entered as judgment of Supreme Court) says:

> "Statutes of limitations are now regarded with favor as based upon consideration of sound public policy. They are in the nature of statutes of repose, requiring diligence in enforcing rights and putting a period to litigation. Such statutes are to be construed in like manner as other statutes *and their application not evaded by implied exceptions.*"

It is the contention of plaintiff in this case that there is an exception to the rule that limitation is governed by the law of the forum, and that such exception is: That the law of the state where the cause of action arose will govern, wherever the suit may be brought, where the statute creating the liability was not known to the common law, and the statute giving the right fixes a time within which the right may be enforced. In the instant case the law of California gave rise to the cause of action, and in California a four year period of limitation is fixed by statute for the enforcement of the right.

While we are aware that there is a conflict in authority in the various jurisdictions on the foregoing point, and that in some states the contended for rule pertains (See 68 A.L.R. 217; 146 A.L.R. 1356), we believe that in Texas our limitation statutes are a part of the public policy of our state, and that once the emigrant from another state lives here for one year, he may plead our statutes of limitations against any cause of action which arose in another state, regard-

less of the longer limitation period prescribed for the particular cause of action by the statutes of the state in which it arose.

Our statutes of limitations in Texas being designed according to the sound public policy of our state to put at rest litigation after the lapse of certain periods of time, cannot be extended by the legislatures of foreign states. Texas therefore follows the general rule that limitation goes to the remedy, and that the law of the forum governs. Texans will not permit the application of our statutes of limitation to be invaded by exceptions. Davis v. Howe, supra.

We therefore hold that the Trial Court erred in applying the California statute of limitations of four years to plaintiff's cause of action, instead of the Texas two year statute of limitations.

Defendant's 2nd contention is that the Trial Court erred in rendering judgment against him for any sum after 16 July 1951, the date upon which he moved to Texas and acquired Texas residence and domicile. The question before us is whether the Texas court should as a matter of comity enforce against a Texas citizen a right which is accorded to the plaintiff under the laws of California, but which right does not exist under the laws of Texas.

Specifically the California statute permits recovery for support and maintenance by the State of California against the son of a patient in a California state hospital. (Sec. 6651 California Welfare and Institutions Code). Texas has a statute which relates

to recovery by the State of Texas for support and maintenance of a patient in a state hospital. Applicable portions of such statute, Article 3196a, R.C.S., provide:

> "Where the patient has no sufficient estate of his own, he shall be maintained at the expense:
>
> "Of the husband or wife of such person, if able to do so;
>
> "Of the father or mother of such person, if able to do so."

It is obvious, by comparison of the California and Texas statutes, that California imposes a liability on a son for support of a parent in a state hospital, while Texas imposes no such liability.

Shall we by comity permit enforcement of the California statute against one of our own citizens?

11 Am. Jur. p. 310, 311, states:

> "There are several situations in which it is well established that the forum will not enforce a foreign statutory right. *Thus, a right given by statute will not be enforced by the courts of another jurisdiction if the statute is against the policy of the law of the forum,* if the enforcement of the right would work injustice to the citizens of the state where the action is brought * * * "

And 11 Am. Jur. p. 299:

> "Comity, being voluntary, and not obligatory, rests in the discretion of the tribunals of the forum and is governed by certain more or less widely recognized rules * * *" (the foreign stat-

ute will be considered) *"if not contrary to the policy of the law of the forum."*

And 12 Am. Jur. p. 102:

"After a citizen has moved into another state he undoubtedly has the right, as a privilege and immunity of citizenship, to become a citizen of any state by a bona fide residence therein with the same rights as other citizens therein."

The rule by which one state applies the law of another state is one of comity only, and cannot be applied in opposition to the positive law of the forum. Chicago, R.I. & P. Ry. Co. v. Thompson, S. Ct., 97 SW 459; 9 Tex. Jur. 357.

Johnson v. Employers Liability Assur. Corp., Ltd., 99 SW 2d 979, CCA W/E Refused, states:

"The decisions of this court (well sustained by high authority) establish this doctrine that the courts of this state will not undertake to adjudicate rights which originated in another state or county, under statutes materially different from the law of this state in relation to the same subject."

It is true that both California and Texas have a statute relating to support of persons confined to the state hospitals. California imposes liability on several classes of persons for such support, including a son. Texas imposes liability for such support on the estate of the person confined, a husband or wife or a mother or father of the person confined. Texas, by its public policy, does not impose liability for the support and maintenance of a person confined to a state hos-

pital upon a son of the person so confined. Thus the public policy of Texas is not to impose such liability.

Comity, under the authorities cited, will not require Texas to enforce the liability imposed by the California statute upon one of our citizens, when the public policy of this state creates no such liability. It should be noted that there is no question here of enforcing a California judgment—only the question of enforcing a right created by a California statute, against a citizen of Texas, when the statutes and public policy of Texas admit of no such right.

We think that the defendant is not liable for support after 16 July 1951, and that the Trial Court erred in holding the defendant, a citizen of Texas, liable for support after such date upon which defendant became a bona fide resident of Texas.

It follows that the judgment of the Trial Court is Reversed and judgment Rendered that plaintiff take nothing as to amounts accruing prior to 21 May 1951 —and as to amounts accruing after 16 July 1951. The judgment of the Trial Court is Affirmed as to amounts accruing in such period in the amount of $80.00 (together with interest at the rate of 6% from date of judgment). Costs in the Trial Court are adjudicated against defendant; costs in the Court of Civil Appeals are adjudicated equally against the parties. Rule 448 TRCP.

REVERSED AND RENDERED IN PART, AFFIRMED IN PART.

FRANK G. McDONALD,
Chief Justice.

(6) JUDGMENT, JUDICIAL DISTRICT COURT.

No. 78,220-E

In the 101st Judicial District Court, Dallas County, Texas.

Department of Mental Hygiene of the State of California,
Plaintiff,

vs.

Dale W. Copus,
Defendant.

On the 13th day of July, A.D. 1956, came on to be heard the above entitled and numbered cause upon the motion for summary judgment by the plaintiff, and upon the stipulations of the parties and the pleadings of the respective parties herein; and came the plaintiff by its attorneys of record and announced ready for trial, and came the defendant, Dale W. Copus, and his attorney of record, and announced ready for trial; whereupon the court, without the intervention of a jury, proceeded to hear said cause, all parties being before the court. And after a hearing thereon, and argument of counsel, the court is of the opinion and so finds that there is an absence of any genuine issue of any material fact, and that the plaintiff should have and recover of and from the defendant judgment for the sum of Three Thousand Four-Hundred Seventy ($3,470.00) Dollars, together with interest thereon at 6% per annum from this date, together with all costs of court.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiff, Department of Mental Hygiene of the State of California, do have and recover of and from the defendant, Dale W. Copus, the sum of Three Thousand Four-Hundred Seventy ($3,470.00) Dollars, together with interest thereon from this date until paid at the rate of 6% per annum, together with all costs of court incurred, for all of which let execution issue.

TO WHICH JUDGMENT the defendant, Dale W. Copus, in open court excepted and objected and gave notice of appeal to the Honorable Court of Civil Appeals for the Fifth Supreme Judicial District of Texas at Dallas, Dallas, Texas.

SIGNED this 17th day of July, A.D. 1956.

/s/ W. C. Dowdy,
Judge, 59th Judicial District Court, sitting for Judge 101st Judicial District Court of Texas, Dallas, Texas.

Chancellor, Wood & Morris,
By: /s/ H. C. Chancellor,
Attorney for Plaintiff.

O.K. as to Form:
/s/ Pat Reed
Pat Reed,
Rt. # 7, Box 493-G, Dallas, Texas.
Attorney for Defendant.

(7) FINDINGS OF FACT AND CONCLUSIONS OF LAW, JUDICIAL DISTRICT COURT.

No. 78,220-E

In the 101st Judicial District Court,
Dallas County, Texas.

Department of Mental Hygiene of the State of California,
Plaintiff,
vs.
Dale W. Copus,
Defendant.

Having been requested by the Defendant, Dale W. Copus, to file findings of fact and conclusions of law in the above cause, the following is submitted:

Findings of Fact.

The court finds that the facts in this cause are without material dispute, and are in accordance with the stipulations of the parties filed in said cause, and the Motion for Summary Judgment filed by the Plaintiff, the Department of Mental Hygiene of the State of California, and as set forth in Plaintiff's First Amended Original Petition. The court finds that this action was brought by the plaintiff against the defendant under the provisions of the laws of the State of California, of which laws the court has taken judicial notice, in accordance with its order heretofore made in said cause.

Conclusions of Law.

The court concludes that the two year statute of limitations pleaded by Defendant is not applicable to

said cause, but that the four (4) year statute of limitations of the State of California is applicable, and, in accordance therewith, the court did not take into consideration any items of said account that accrued more than four (4) years prior to the commencement of this action on the 21st day of May, 1953.

The court further concludes that the liability of the defendant, Dale W. Copus, is a continuing one; and that the removal of the defendant from the State of California to the State of Texas, on or about the 16th day of July, 1951, and his continued residence and domicile in Texas, does not discharge him from such continuing liability under the laws of the State of California, the defendant having been a resident of California at the time of the commencement of such continuing liability. That the plaintiff is entitled to recover from the defendant the sum of $3,470.00 as herein rendered.

/s/ W. C. Dowdy,
Judge, 59th Judicial District Court
of Texas, sitting for Judge 101st
Judicial District Court of Texas,
Dallas, Texas.

Endorsement on Instrument: No. 78,220-E,
Department of Mental Hygiene, of the
State of California v. Dale W. Copus,
Findings of Fact and Conclusions of Law.

Filed: August 3, 1956.
Bill Shaw, District Clerk, Dallas County, Texas.
By: Ivey, Deputy.

Appendix C

STATES HAVING STATUTES SIMILAR TO CALIFORNIA WELFARE AND INSTITUTIONS CODE SEC. 6650.

STATE:	CITATION TO STATUTE
Arkansas	Ark. Stats. (1947) 59-230
Colorado	Colo. Rev. Stats. (1953) Art. 1, Chap. 71, §15
Connecticut	Conn. Gen. Stats. (1945) Chap. 119, § 2663
Delaware	Del. Code Chap. 51, Tit. 16, § 5127
Idaho	Idaho Code, § 66-354
Illinois	Ill. Ann. Stat. Chap. 91½, § 9-19
Indiana	Ann. Ind. Stat. Tit. 22, § 401(a)
Kansas	Kan. Gen. Stat. (1957 Supp.) Chap. 59, § 2006
Kentucky	K.R.S. (1955) 203.080
Maryland	Md. Code Ann. (1957) Art. 59, § 5
Massachusetts	Ann. Laws Mass. (1957) Chap. 123, § 96
Michigan	Mich. Stats. Ann. (1956) Chap. 127, Art. 14.816
Minnesota	Minn. Stats. (1953) § 526.01
Mississippi	Miss. Code (1942) § 6909-13
Montana	Rev. Code Mont. (1957 Supp.) Tit. 38, § 214
Nevada	Nev. Rev. Stats. 433.370
New Hampshire	N.H. Rev. Stats. Ann. (1955) § 8.41
New Jersey	Rev. Stats. N.J. (1937) 30:4-66
New York	Consolidated Laws N.Y. Mental Hygiene Law, § 24, subd. 2
Ohio	Ohio Rev. Code (1957 Supp.) Tit. 51, § 5121.06
Oregon	Ore. Rev. Stats. (1955 Supp.) § 428.101
Pennsylvania	Penn. Stats. Ann. Tit. 50, § 1361
Rhode Island	Gen. Laws R.I. (1956) § 26-3-17
Tennessee	Tenn. Code § 33-629
Vermont	Vt. Stats. (1947 Rev.) Chap. 281-6679
Virginia	Code of Va. (1956) § 37-125.1
Washington	Rev. Code of Wash. § 71.02.230
West Virginia	Code W. Va. § 2672

Appendix D

STATES HAVING UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT OR LIKE LEGISLATION.

State	Citation to Reciprocal Support Law	Type of Act (a)	Petitioner's Choice of Laws (b)
Alabama	Act. No. 879, Gen. Acts of Ala. 1951 Act. No. 823, Gen. Acts of Ala. 1953	RESA	Limited
Alaska	Chap. 31, Session Laws of Alaska 1953	RESA	Limited
Arizona	Ariz. Rev. Stats. Sec. 12-1651 et seq.	RESA	Limited
Arkansas	Ark. Stats. (1947) 34-2401 to 34-2430	RESA	Limited
California	Code Civ. Proc., Secs. 1650-1690	RESA	Broad
Colorado	Art. II, Chap. 43, Colo. Rev. Stats. 1953	RES	Broad
Connecticut	Chap. 415b, Gen. Stats. Conn.	RESA	Limited
Delaware	Chap. 6, Tit. 13, Del. Code	RESA	Limited
Florida	Chap. 29901, Laws Fla., Acts 1955	RESA	Limited
Georgia	Georgia Laws, 1956, No. 426, p. 703 as amended by Georgia Laws, 1957, No. 242, p. 291	SOD	Limited
Guam	Title IX, Pt. III, Code Civ. Proc.	RESA	Limited
Hawaii	Act 192, Sess. Laws Hawaii 1953	RESA	Limited
Idaho	Chap. 246, Idaho Laws 1953, p. 379	RES	Limited
Illinois	Chap. 68, Ill. Rev. Stats., as amended by H. B. 372 of 1955	RESA	Limited
Indiana	Chap. 224, Acts of 1951, as amended by Chap. 148, Acts of 1953	RESA	Broad
Iowa	Chap. 252, 1954 Code of Iowa, as amended by Chap. 129, Laws of 1955	RESA*	Limited
Kansas	G. S. 1955 Supp. 23-419 to 23-446	RESA	Limited
Kentucky	K.R.S. Chap. 407, as enacted by Chap. 190, Ky. Acts of 1954	RESA	Limited
Louisiana	R. S. Tit. 13, Chap. 6, 1641-1673 (as amended in 1954)	RES	Broad
Maine	R. S. 1954, Chap. 167, as amended by Chap. 5, Pub. Laws 1955, and Chap. 280, Pub. Laws 1957	RESA	Limited
Maryland	Art. 89C, Md. Code Ann. 1951, as amended by 1952 Ch. 44 & 1953 Ch. 498	RESA	Limited
Massachusetts	Chap. 273A, Gen. Laws, as amended by Chap. 556, P.A. 1954, Chap. 29, P.A. 1955, and Chaps. 74 and 110, P.A. 1957	RES	Broad
Michigan	Act 8, P.A. 1952, as amended by Act 202, P.A. 1953, Act 161, P.A. 1955, and Act 1471, P.A. 1957	RESA	Broad
Minnesota	Minn. Stats. 1953, 518.41 to 518.63	Special	.....
Mississippi	Chap. 211, Laws of 1954	RESA	Broad
Missouri	Chap. 454, R.S.Mo. (as amended)	RESA	Limited
Montana	Chap. 222, Laws 1951	RES	Broad

State	Citation to Reciprocal Support Law	Type of Act (a)	Petitioner's Choice of Laws (b)
Nebraska	Sec. 42-701, Rev. Stats. Neb. 1943, 1957 Cum. Supp. (amended by Sessions Laws 1957, Chap. 173, p. 595)	RES	Limited
Nevada	Chap. 44, Laws of 1955, as amended by Laws 1957, Chap. 8, p. 9	RESA	Limited
New Hampshire	Chap. 191, Laws of 1953, as amended by Laws 1957, Chap. 3	RESA	Limited
New Jersey	N.J.S. 2A: 4-30.1 to 30.23	RESA	Limited
New Mexico	Art. 19, Vol. 5, N. M. Stats. Ann. 1953, Sec. 22-19-1 to 27	RESA	Limited
New York	N.Y.U.S.D.L., Chap. 807, Laws of 1949, as amended	SOD	.....
North Carolina	Chap. 52A, N. C. Gen. Stats. as amended	RESA	Limited
North Dakota	N.D.R.C. of 1934, Chap. 14-12, as amended	RESA	Limited
Ohio	Sec. 3115.01, Rev. Code of Ohio	RESA	Limited
Oklahoma	Chap. 32, Tit. 12, Ok. Stats. 1951, as amended 1953	RESA	Limited
Oregon	Chap. 110, O.R.S.	RESA	Limited
Pennsylvania	Act 335 of 1953, 62 P. S. 2043.1	RESA	Limited
Puerto Rico	Act 71 of 1956, p. 308	RES	Limited
Rhode Island	R. I. Pub. Laws 1951, Chap. 2772 as amended by Pub. Laws 1953, Chap. 3118	RESA	Broad
South Carolina	S.C. Code, Secs. 20-337 et seq. (enacted 1954)	RESA	Limited
South Dakota	Chap. 41, Session Laws 1953	RESA	Limited
Tennessee	Chap. 188, Pub. Acts 1953, amended by Chap. 106, Pub. Acts 1955	RESA	Limited
Texas	Arts. 2328b-1 through 3, Vernon's Tex. Civ. Stats.	RESA	Broad
Utah	Tit. 77, Chap. 61, Ut. Code Ann. 1953	RES	Limited
Vermont	No. 243, Pub. Acts 1953	RESA	Limited
Virginia	Tit. 20, Chap. 5.2, Code of Va. (1956 Cum. Supp.)	RESA	Broad
Virgin Islands	Bill No. 3, 14th Leg. Assembly 1949	SOD	.....
Washington	R.C.W. 26.21.010 (Chap. 196, Laws of 1951)	RES	Broad
West Virginia	Chap. 48, Art. 9, Code W. Va. 1949 as amended	RES	Broad
Wisconsin	Sec. 52.10, Wis. Stats.	RESA	Limited
Wyoming	Chap. 3, Art. 81, Wy. Comp. Stats. Ann.	RESA	Limited

(a) RES indicates Uniform Reciprocal Enforcement of Support Act as originally promulgated; RESA indicates adoption of some substantial part of the Uniform Act amendments recommended in 1952 by the Uniform Law Commissioners; RESA* means the Act still contains numerous provisions of a previous act based on SOD; SOD indicates Support of Dependents Law as developed by New York. Some variations exist in all acts.

(b) "Broad" indicates that the petitioner is given a choice of which state's support laws shall apply in a reciprocal case; "Limited" indicates that presence of the obligor shall determine which state's support law will apply.